

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN ITALIAN PASTA COMPANY	)	
	)	
Opposer,	)	Opposition No. 91161373
	)	
v.	)	
	)	
BARILLA G. E R. FRATELLI - SOCIETA	)	
PER AZIONI,	)	
Applicant.	)	

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**OPPOSER'S MOTION TO FILE  
DEPOSITION TRANSCRIPT AND EXHIBITS UNDER SEAL**

Pursuant to TBMP Rule 703.01(p) and the Protective Order entered in this case, Opposer requests that portions of John Andrew Lericos' testimonial deposition transcript, and accompanying exhibits, be filed under seal. In particular, Opposer requests that page 60, lines 11 through 25, through page 83, lines 1 through 25 of the transcript be filed under seal, pursuant to the Protective Ordered herein. Those designations were treated as "Confidential - Trade Secret/Commercially Sensitive" material during the deposition. Attached is a copy of the Lericos transcript for public viewing with the identified pages redacted.

Additionally, Exhibits 75 through 79, that were introduced on those identified pages, are also deemed "Confidential - Trade Secret/Commercially Sensitive" under the Protective Order and are filed in an envelope designated "Under Seal." As such, and for convenience of the Board, pages representing redacted Exhibits 75 through 79 are attached hereto.


These pages of testimony and the exhibits identified contain trade secret or other confidential commercial and research information. As such, they have been treated as "Confidential - Trade Secret/Commercially Sensitive" during the course of the proceeding.

12-11-2006

WHEREFORE, Opposer respectfully requests that the sensitive portions of Lericos' testimonial deposition transcript and Exhibits 75 through 79 be filed under seal.

Date: 12/4/06

Respectfully submitted,

  
Thomas H. Van Hoozer, Reg. No. 32761  
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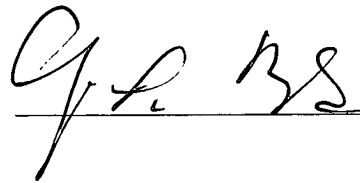
Attorney for Opposer

CERTIFICATE OF MAILING

The undersigned hereby certifies that **OPPOSER'S MOTION TO FILE DEPOSITION TRANSCRIPT AND EXHIBITS UNDER SEAL** was filed via First Class U.S. Mail addressed to:

Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

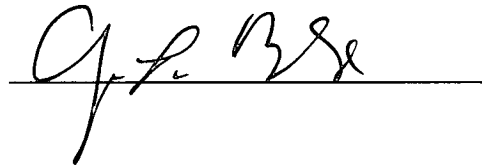
on this 4<sup>th</sup> day of December, 2006.



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first class mail, postage prepaid, this 4th day of December, 2006, on the following:

G. Franklin Rothwell  
Brian E. Banner  
ROTHWELL, FIGG, ERNST & MANBECK P.C.  
1425 K Street, NW, Suite 800  
Washington, DC 20005  
Fax: (202) 783-6031

A handwritten signature in black ink, appearing to read "G. F. Rothwell", is written over a horizontal line.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN ITALIAN PASTA  
COMPANY,

Applicant,

vs.

Opposition No. 91-161,373

BARILLA G. E. R. FRATELLI-  
SOCIETA PER AZIONI,

Opposer.

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DEPOSITION OF

ANDREW JOHN LERICOS

November 3, 2006  
10:10 a.m.

Law Offices of Hovey Williams LLP  
2405 Grand Boulevard  
Kansas City, Missouri

Bobbi J. Pyle, Certified Court Reporter for the State of Missouri

APPEARANCES

FOR THE APPLICANT:

ROTHWELL, FIGG, ERNST & MANBECK

BRIAN E. BANNER, ESQUIRE

1425 K Street NW, Suite 800

Washington, DC 20005

FOR THE OPPOSER:

HOVEY WILLIAMS, LLP

THOMAS H. VAN HOOZER, ESQUIRE

CHERYL L. BURBACH, ESQUIRE

2405 Grand Boulevard, Ste. 400

Kansas City, MO 64108-2519

ALSO PRESENT:

MS. KATIE GRAY

## STIPULATIONS

1  
2 IT IS HEREBY STIPULATED AND AGREED  
3 by and between counsel for the applicant and  
4 counsel for the opposer that this deposition  
5 may be taken in stenographic shorthand by  
6 Bobbi J. Pyle, Certified Court Reporter, and  
7 afterwards reduced into typewriting.

8 IT IS FURTHER STIPULATED AND AGREED  
9 by and between the parties that presentment  
10 to the attorneys of record of a copy of this  
11 deposition shall be considered submission to  
12 the witness for signature pursuant to  
13 703.01(j) -- 37 CFR 2.123(e)(5); but shall in  
14 no way be considered as a waiver of the  
15 witness's signature, to be signed by the  
16 witness at any time before or at the trial  
17 of this case, and if not signed by the time  
18 of trial it may be used as if signed.

19 IT IS FURTHER STIPULATED AND AGREED  
20 between counsel for the respective parties  
21 hereto that the deposition of the witness may  
22 be signed before a notary public.

23 .

24 .

25 .

1 Deposition of Andrew John Lericos

2 November 3, 2006

3 PROCEEDINGS

4 (The proceedings were scheduled to  
5 begin at 9:00 a.m. Proceedings actually  
6 began at 10:10 a.m.)

7 ANDREW JOHN LERICOS, of lawful age,  
8 being first duly sworn to tell the truth, the  
9 whole truth, and nothing but the truth,  
10 deposes and says on behalf of the opposer, as  
11 follows:

12 THE REPORTER: Do you solemnly  
13 swear that the testimony you are about to  
14 give in the cause pending will be the truth,  
15 the whole truth, and nothing but the truth?

16 THE WITNESS: I do.

17 DIRECT EXAMINATION

18 BY-MR.VAN-HOOZER:

19 Q. Would you please state your full  
20 name for the record?

21 A. Andrew John Lericos.

22 Q. And what is your current employer?

23 A. American Italian Pasta Company.

24 Q. And what is your current position?

25 A. Vice president marketing.

MR. VAN HOOZER: Mark as Exhibit

1.

(Deposition Exhibit-1 was marked by  
Mr. Van Hoozer for identification.)

Q. (By Mr. Van Hoozer) Mr. Lericos,  
are you appearing pursuant to the notice of  
deposition that's marked as Exhibit 1 in this  
case?

A. Yes.

Q. When did you start your employment  
with American Italian Pasta Company?

A. January, 2004.

Q. Okay. And prior to assuming your  
current title with American Italian Pasta  
Company, did you have any previous positions?

A. Yes. I was director of marketing.

Q. And how long have you held your  
current position?

A. Since April of this year, 2006.

Q. What are your current duties and  
responsi-bilities at American Italian Pasta  
Company?

A. I'm responsible for all the  
marketing activities of the company, including  
from strategic planning down through tactical



1 execution of all advertising, promotion,  
2 innovation, package design.

3 Q. And what were your previous duties  
4 and responsibilities?

5 A. Similar, without as much of the  
6 strategic elements of the business. So more  
7 of the - - some strategic, but more of the  
8 tactical execution.

9 Q. And what are the fields or  
10 channels of distribution through which AIPC  
11 sells its products?

12 A. We sell products through the  
13 grocery, retail grocery industry, the mass  
14 merchandising industry, through club stores,  
15 through food service distribution, through  
16 ingredients supplied to other manufacturers,  
17 and we export product to other countries, and  
18 we import product from Italy into the U.S.

19 Q. Does American Italian Pasta Company  
20 maintain records of its business in connection  
21 with its products and sales?

22 A. Yes, we do.

23 Q. Okay. Does that include branded  
24 products?

25 A. Yes, it does.

1           Q.       What are the product brands that  
2                   are managed by you in the course of your  
3                   business?

4           A.       Sure.  There's Mueller's, Golden  
5                   Grain Mission, Anthony's, Luxury, Ronco, R&F,  
6                   Martha Gooch, Heartland, Pennsylvania Dutch,  
7                   and Mrs. Grass, and Pasta La Bella.

8           Q.       In connection with your  
9                   responsibilities for AIPC, do you have any  
10                  responsibility for business records of the  
11                  company relating to those brands?

12          A.       Yes, I do.  I'm the custodian of  
13                  those records and keep them in my possession.

14          Q.       Does it maintain records regarding  
15                  those branded products in the course of its  
16                  business?

17          A.       Yes, it does.

18          Q.       Could you tell us about your  
19                  education since high school?

20          A.       Sure.  I have a bachelor of  
21                  science degree from Towson State University in  
22                  Baltimore and some credits towards a master's  
23                  degree from the University of Baltimore.

24          Q.       What prior work experience do you  
25                  have in the food industry?

1           A.       Worked for McCormick and Company  
2           for 14-plus years, worked for Snyders of  
3           Hanover in the pretzel business for about  
4           3-1/2 years, worked for Wampler Foods in the  
5           turkey business for less than two years,  
6           worked for Rexall Sundown, although that was  
7           not a food-related, but marketing related, for  
8           less than two years, and American Italian  
9           Pasta Company for almost three years.

10          Q.       You mentioned the Mueller brands as  
11          one of the brands which you were responsible  
12          for.

13          A.       Um-hum.

14          Q.       Where is the Mueller's pasta  
15          currently produced?

16          A.       Mueller's pasta is produced in  
17          Excelsior Springs and also Columbia, South  
18          Carolina.

19          Q.       What other brands of pasta are  
20          produced at the South Carolina and Excelsior  
21          Springs plant?

22          A.       We produce the Ronco brand, the  
23          Heartland brand, the R&F brand, the Martha  
24          Gooch brand, the Luxury brand are all  
25          produced in those operations, as well as

1 Pasta La Bella, Pennsylvania Dutch, and Mrs.  
2 Grass.

3 MR. VAN HOOZER: Let's go off the  
4 record for just a second.

5 (A discussion was held off the  
6 record.)

7 (Deposition Exhibit-2 was marked by  
8 Mr. Van Hoozer for identification.)

9 MR. VAN HOOZER: Back on the  
10 record.

11 Q. (By Mr. Van Hoozer) Let me show  
12 you what's been marked as Exhibit 2. Do you  
13 recognize Exhibit 2?

14 A. Yes, I do.

15 Q. What is it?

16 A. It is our current Mueller's  
17 packaging.

18 Q. And who produces the product of  
19 Exhibit 2?

20 A. It's produced by our company in  
21 the Excelsior Springs or Columbia plant.

22 Q. Okay. What is the geographic  
23 scope of sales of the Mueller's brand?

24 A. Mueller's is sold east of the  
25 Mississippi primarily through the grocery

1 channel, but it is also sold in military  
2 commissaries throughout the country, and on an  
3 in-and-out basis through big box stores, like,  
4 Big Lots or Dollar General to move through  
5 product excess, inventory of product through  
6 those channels.

7 Q. Is Mueller's exported?

8 A. Mueller's is exported to the  
9 Caribbean.

10 Q. Where can a consumer purchase the  
11 product that's shown in Exhibit 2?

12 A. Traditional grocery stores, but  
13 also Wal-Mart Supercenters is another place  
14 they could purchase it.

15 Again, military commissaries would  
16 be a place and/or the big box stores.

17 MR. VAN HOOZER: Off the record  
18 again.

19 (A discussion was held off the  
20 record.)

21 MR. VAN HOOZER: Back on the  
22 record.

23 Q. (By Mr. Van Hoozer) Could you  
24 give me some history of the Mueller's brand?

25 A. Sure. The Mueller's brand began

1 in 1867 by the Mueller family.

2 They started primarily in noodles,  
3 spaghetti, and elbow-type products. The  
4 family ran the business for many years. I  
5 believe they were in -- they were part of  
6 the Macaroni Council so they were very  
7 prominent within the pasta industry.

8 They sold the business to, I  
9 believe, NYU Law School at some point and  
10 then the business was sold to several other  
11 companies.

12 Most recent before American Italian  
13 Pasta was Best Foods. And Best Foods owned  
14 and managed the brand and then was -- then a  
15 supply agreement was struck with American  
16 Italian Pasta Company in 1997 where we  
17 supplied -- we were the manufacturing arm for  
18 that product.

19 And then in 2000, American Italian  
20 Pasta Company purchased the brand outright and  
21 became the sole owner of the Mueller's brand.

22 (Deposition Exhibit-3 was marked by  
23 Mr. Van Hoozer for identification.)

24 Q. (By Mr. Van Hoozer) Let me show  
25 you what's been marked as Exhibit 3. What

1 is Exhibit No. 3?

2 A. Exhibit 3 is a press release  
3 announcing the change to the Mueller's package  
4 design when it was coming out in the  
5 marketplace.

6 Q. So does that give you an idea as  
7 to when that product that's shown in Exhibit  
8 2--

9 A. Right. This was the same product  
10 shown in Exhibit 2 and this was a press  
11 release that we put together and distributed,  
12 looks like, December of 2005 to announce this  
13 change to the packaging and what the  
14 rationale was behind it.

15 Q. Did you have any authorship of  
16 that?

17 A. Yes, I did. I was intimately  
18 involved in writing and proofing this before  
19 it went to final edit and final release.

20 (Deposition Exhibit-4 was marked by  
21 Mr. Van Hoozer for identification.)

22 MR. VAN HOOZER: Off the record.

23 (A discussion was held off the  
24 record.)

25 MR. VAN HOOZER: Back on the

1 record.

2 Q. (By Mr. Van Hoozer) Let me show  
3 you what's been marked Exhibit 4. Can you  
4 identify that?

5 A. Yes, that's another current package  
6 of the Mueller's product and what we would  
7 call a shortgood that was introduced in the  
8 same timing as this press release.

9 (Deposition Exhibits-5&6&7 were  
10 marked by Mr. Van Hoozer for identification.)

11 Q. (By Mr. Van Hoozer) Mr. Lericos,  
12 let me show you what I've marked as Exhibits  
13 5, 6, and 7.

14 Could you please tell me if you  
15 recognize those exhibits?

16 A. Yes, I do. These are another  
17 formula of Mueller's pasta, the multi-grain  
18 formula, in their current package design and  
19 this package design is very similar to the  
20 traditional Mueller's pasta with the one  
21 difference being reversing a red and blue  
22 stripe out to identify this as a different  
23 formula.

24 But generally the same general  
25 branding is on both packages with description



1 of what the formula is being called out as  
2 multi-grain.

3 And this is the current package  
4 that is in the marketplace today.

5 Q. Referring now to Exhibits 2, 3, 4,  
6 5, 6, and 7, could you tell us about the  
7 similarities and differences between the  
8 packages shown in those exhibits?

9 A. Certainly. The similarity, the  
10 largest similarity, is the Mueller's logo that  
11 is in the -- is a banner over a star with  
12 wheat that speaks to "Quality since 1867" and  
13 then the phrase, "America's Favorite Pasta"  
14 underneath it.

15 The next biggest similarity is that  
16 the main body of the packaging is on a white  
17 field and that is a color that is associated  
18 with the Mueller's brand, as is actually the  
19 red, white, and blue color as the Mueller's  
20 brand is very much an Americana position  
21 product.

22 Beyond that, there are, again,  
23 stripes on the top and bottom on the  
24 shortgood package or either ends on the  
25 longgood package and that is a consistent

1 element regardless of whether it's the  
2 traditional pasta or it is the multi-grain  
3 pasta.

4 Q. So how is the particular cut of  
5 the pasta identified?

6 A. Sure. There is a description of  
7 the specific cut, be it sea shells,  
8 spaghetti, penne or the multi-grain spaghetti.

9 So the name of the product we  
10 would refer to as the name or the product  
11 description is on each package.

12 And there's a window in each  
13 package that has the actual product shown  
14 through it so the consumer can see the  
15 specific shape that they're buying.

16 Obviously, there's also net weight,  
17 which is a legal requirement on each and  
18 every package. There is a kosher  
19 certification on the package.

20 MR. VAN HOOZER: Let me go off  
21 the record again.

22 (A discussion was held off the  
23 record.)

24 (Deposition Exhibit-8 was marked by  
25 Mr. Van Hoozer for identification.)

1 MR. VAN HOOZER: Back on the  
2 record.

3 Q. (By Mr. Van Hoozer) Let me show  
4 you what I've marked as Exhibit No. 8 and  
5 ask if you can recognize that?

6 A. Yes, that is the package design  
7 for Mueller's prior to this most recent  
8 packaging change.

9 MR. BANNER: May I please have a  
10 copy of Exhibit 8?

11 MR. VAN HOOZER: (Counsel handed a  
12 document to Mr. Banner.)

13 MR. BANNER: Thank you.

14 Q. (By Mr. Van Hoozer) Is this  
15 packaging style still in distribution?

16 A. For the most part, it is not;  
17 however, there could be instances where  
18 inventory is still being moved through the  
19 old package. But the majority of product  
20 should have transitioned at this time to the  
21 new package design.

22 But, you know, there's not -- I  
23 can't tell you with 100 percent certainty  
24 that none of this is still in the  
25 marketplace.

1 Q. Do you know when this style of  
2 package was first distributed by American  
3 Italian Pasta Company?

4 A. Distributed by American Italian  
5 Pasta would be in 1997 when we got the  
6 supply agreement with the Best Foods Company.  
7 This was the package design, I believe, at  
8 that time.

9 Q. I'd like to have you look at the  
10 upper left-hand corner at the packaging on  
11 there. What do you see in the upper left-hand  
12 corner?

13 A. There is an American flag graphic  
14 and "America's Favorite Pasta" above the  
15 Mueller's brand name.

16 Q. Okay. When was the flag element  
17 introduced?

18 A. To the best of my knowledge, with  
19 this packaging. I'm not certain prior to  
20 that, but I know with this packaging this was  
21 part of the packaging.

22 (Deposition Exhibit-9 was marked by  
23 Mr. Van Hoozer for identification.)

24 Q. (By Mr. Van Hoozer) Mr. Lericos,  
25 let me show you what's been marked as Exhibit

1                   9.

2                   I believe you testified Best Foods  
3 was the predecessor before American Italian  
4 Pasta Company in terms of the owner of the  
5 mark?

6                   A.       That's correct.

7                   Q.       Do you recognize Exhibit 9?

8                   A.       I do.

9                   Q.       Take a look at it.

10                  A.       (Witness complied.)

11                  Q.       Can you tell me what that is?

12                  A.       This is a Mueller's fettuccine  
13 product that was, again, sold by Best Foods,  
14 distributed by Best Foods, 1999.

15                         appears to be the mark on this  
16 package and it is an Italian style version of  
17 the Mueller's package.

18                  Q.       Now, in the upper right-hand corner  
19 of this package, do you see a flag element?

20                  A.       There's not a flag element, but  
21 "America's Favorite Pasta" is noted.

22                         MR. VAN HOOZER: I tell you what,  
23 this might be a good time to see if you can  
24 round up those boxes for Mr. Banner and I'll  
25 try to mark these.

1 (A discussion was held off the  
2 record.)

3 (Deposition Exhibit-10THRU40 were  
4 marked by Mr. Van Hoozer for identification.)

5 MR. VAN HOOZER: Back on the  
6 record.

7 Q. (By Mr. Van Hoozer) Mr. Lericos,  
8 let me show you Exhibit 10 and actually I'm  
9 going to follow it shortly with a number of  
10 other similar exhibits.

11 Could you tell me what Exhibit 10  
12 is?

13 A. It's an example of the Mueller's  
14 package that was used prior to the current  
15 package design for an elbow macaroni product.

16 Q. And what's Exhibit 11?

17 A. An example of the prior package  
18 design for fettucini.

19 Q. And Exhibit 13?

20 A. Example of the prior--

21 MR. BANNER: 12? Did you say 12?

22 A. This is 12.

23 Q. (By Mr. Van Hoozer) I'm sorry.

24 12.

25 A. Example of the prior package design

1                   used for thin spaghetti, 3 pound.

2                   Q.       Exhibit 13, what is that?

3                   A.       Prior package design for twist.

4                   Q.       And Exhibit 14, what is that?

5                   A.       A prior package design for elbow  
6 macaroni.

7                   Q.       And Exhibit 15, what's that?

8                   A.       Prior package design for tri-color  
9 twists.

10                  Q.       And Exhibit 16, what is that?

11                  A.       Prior package design for sea  
12 shells.

13                  Q.       Exhibit 17, can you identify that?

14                  A.       The prior package design for  
15 rigatoni.

16                  Q.       Can you identify Exhibit 18?

17                  A.       It's the prior package design for  
18 lasagna.

19                  Q.       Can you identify Exhibit 19?

20                  A.       The prior package design for  
21 linguine.

22                  Q.       Exhibit 20, can you identify that?

23                  A.       Prior package design for 1-pound  
24 lasagna. The other version was the 8-ounce  
25 lasagna.

1 Q. Exhibit 21, can you identify that?

2 A. This is the prior package design  
3 for 2-pound spaghetti.

4 Q. Can you identify Exhibit No. 22?

5 A. Prior package design for ziti.

6 Q. Exhibit No. 23, can you identify  
7 that?

8 A. Prior package design for sea  
9 shells.

10 Q. Exhibit 24, can you identify that?

11 A. Prior package design for  
12 mini-penne.

13 Q. Exhibit 25, can you identify that?

14 A. Prior package design for thin  
15 spaghetti, 8-ounce.

16 Q. Can you identify Exhibit 26?

17 A. Prior package design for  
18 vermicelli.

19 Q. Can you identify Exhibit No. 27?

20 A. Prior package design for spaghetti,  
21 8-ounce.

22 Q. Exhibit 28, can you identify that?

23 A. Prior package design for  
24 vermicelli, 8-ounce.

25 Q. Exhibit 29, can you identify that?



1                   A.       It's the prior package design for  
2                   angel hair.

3                   Q.       Exhibit 30, can you identify that?

4                   A.       Prior package design for thin  
5                   spaghetti.

6                   Q.       Exhibit 31, can you identify that?

7                   A.       Prior package design for jumbo  
8                   shells.

9                   Q.       Exhibit No. 32, can you identify  
10                  that?

11                  A.       Prior package design for gemelli.

12                  Q.       Exhibit No. 33, can you identify  
13                  that?

14                  A.       Prior package design for rotini.

15                  Q.       Exhibit 34, can you identify that?

16                  A.       The prior package design for fine  
17                  linguine.

18                  Q.       Exhibit 35, can you identify that?

19                  A.       Prior package design for tri-color  
20                  shells.

21                  Q.       Exhibit 36, can you identify that?

22                  A.       Prior package design for elbow  
23                  macaroni, 32-ounce.

24                  Q.       Exhibit 37, can you identify that?

25                  A.       Prior package design for tri-color

1 ruffles.

2 Q. Exhibit 38, can you identify that?

3 A. Prior package design for tri-color  
4 bowties.

5 Q. Exhibit 39, can you identify that?

6 A. Prior package design for  
7 mostaccioli.

8 Q. Exhibit 40, can you identify that?

9 A. It's the prior package design for  
10 ridged elbows.

11 Q. Mr. Lericos, what I would like you  
12 to do now is look at Exhibits 2 and 9 and  
13 8, and what I'd like you to do is then  
14 compare for us the differences and  
15 similarities between those packages.

16 A. Okay. Exhibit 9 is the Mueller's  
17 package; however, with the distinction of  
18 "Italian Style."

19 And while in a similar sense, the  
20 Mueller's branding between it and Exhibit 8  
21 are very similar from the font of the  
22 Mueller's name and somewhat different from the  
23 font on Exhibit 2.

24 All three packages have a white  
25 background as the primary color on the

1 package.

2 Exhibit 9 uses a green and red  
3 stripe on either end of the package; whereas,  
4 Exhibits 8 and 2 use blue and red as opposed  
5 to green and red.

6 Exhibit 9 has some wheat icon  
7 behind the Mueller's name. Exhibit 8 does  
8 not.

9 And Exhibit 2 has the Mueller's  
10 name in a banner, has a star, and a  
11 different wheat design behind the name.

12 Exhibit 9 says, "America's Favorite  
13 Pasta" without a flag. Exhibit 8 says,  
14 "America's Favorite Pasta" with a flag design  
15 above it. And Exhibit 2 says, "America's  
16 Favorite Pasta" without the flag.

17 Exhibit 9 says, "Made with 100  
18 percent semolina." Exhibit 8 says the same  
19 but different placement on the package. And  
20 Exhibit 2 says, "Made with North American  
21 grown durum wheat."

22 Q. Are you familiar with the term  
23 "branding elements" as it relates to pasta  
24 packaging?

25 A. Yes.

1           Q.       What does that mean in this  
2 context?

3           A.       It means the messaging that you're  
4 communicating to the consumer in a specific  
5 hierarchy.

6           Q.       What would be the branding elements  
7 of Exhibit 2?

8           A.       Branding elements of Exhibit 2,  
9 first and foremost, would be the Mueller's  
10 name in the red banner and part in the logo  
11 elements, including the star and the wheat  
12 field.

13                   Secondly, would be the white color  
14 stands out as a major branding element so the  
15 consumers see that color, including the blue  
16 and red stripes on the ends and identify that  
17 with the brand.

18                   Third, would be "America's Favorite  
19 Pasta" as a slogan that consumers would  
20 associate with the Mueller's brand.

21                   And then, fourth, would be "Quality  
22 Since 1867."

23                   So that, again, in hierarchy of  
24 elements that would stand out to consumers,  
25 that would be the things that would stand out

1 most prominently to consumers regarding the  
2 brand itself.

3 Q. Then what would be the branding  
4 elements of Exhibit 8?

5 A. Exhibit 8 would be the Mueller's  
6 brand name and then the red, white, and blue  
7 package color. And then "America's Favorite  
8 Pasta" with the flag design and then "Quality  
9 Since 1867."

10 Q. And then, finally, what would be  
11 the branding elements of Exhibit 9?

12 A. It would be the Mueller's name;  
13 would be the white and then green and red  
14 package color; would be "America's Favorite  
15 Pasta"; and then it would be "Italian Style"  
16 to identify the specific style of product  
17 being represented here.

18 Q. Referring to Exhibit 2, how does  
19 the showing an "America's Favorite Pasta"  
20 relate to the remainder of the packaging from  
21 a branding perspective?

22 A. We believe this is an integral  
23 part of the package because in our consumer  
24 research, consumers have told us that  
25 Mueller's is an Americana brand and that they

1 think of it as an American brand and they  
2 associate it with America, and not as an  
3 imported Italian-type product.

4 So "America's Favorite Pasta" is  
5 meaningful.

6 When they see the Mueller's brand,  
7 it gives them an associate of Mueller's as an  
8 American favorite.

9 Q. How would you answer that question  
10 with regard to Exhibit 8?

11 A. I think the answer is very much  
12 the same. It's just Exhibit 2 is a more  
13 contemporary version and Exhibit 8 has very  
14 much the same elements in it.

15 (Deposition Exhibits-41THRU51 were  
16 marked by Mr. Van Hoozer for identification.)

17 Q. (By Mr. Van Hoozer) Mr. Lericos,  
18 let me show you Exhibit 41 and tell me if  
19 you recognize that?

20 A. I do.

21 Q. And Exhibit 42, do you recognize  
22 that?

23 A. I do.

24 Q. And Exhibit 43, do you recognize  
25 that?

1 A. I do.

2 Q. And Exhibit 44, do you recognize  
3 that?

4 A. I do.

5 Q. Exhibit 45, do you recognize that?

6 A. Yes.

7 Q. Exhibit 46, do you recognize that?

8 A. Yes.

9 Q. Exhibit 47, do you recognize that?

10 A. Yes.

11 Q. Exhibit 48, do you recognize that?

12 A. Yes.

13 Q. Exhibit 49, do you recognize that?

14 A. Yes.

15 Q. Exhibit 50, do you recognize that?

16 A. Yes.

17 Q. Exhibit 51, do you recognize that?

18 A. Yes.

19 Q. Mr. Lericos, let me ask you, what  
20 are the documents I've just handed you, which  
21 are Exhibits 41 through 51?

22 A. These are the Mueller's package  
23 design prior to Exhibit 8 that were produced  
24 by Best Foods or designed, I should say, and  
25 managed by Best foods for the Mueller's

1 brand.

2 Q. With regard to Exhibits 41 through  
3 51, do you have an understanding as to why  
4 on some occasions a blue border was used and  
5 on other occasions the green border shown,  
6 for example, in Exhibit 41 was used? Or  
7 maybe the red border or some other color?

8 A. My understanding, based on my  
9 knowledge of the package design, would be  
10 that this was a way that they wanted to  
11 communicate different things about the specific  
12 product, not necessarily about the brand, but  
13 about the specific product that was in that  
14 particular package.

15 For example, Exhibit 41 has green  
16 because that's to denote that it's Italian  
17 Style. It's the Mueller's product, but an  
18 Italian-style version.

19 Exhibit 42 is in an orange color  
20 in the stripes or the banners and that's to  
21 denote that it is a tri-color product.

22 So color was used as a cue to  
23 tell consumers, you know, if you're looking  
24 for a tri-color product, look for the one  
25 with the orange stripes.



1                   If you're looking for Italian  
2 style, the green stripes. If you're looking  
3 for traditional semolina pasta, look for the  
4 blue striped product. That would be my  
5 assessment.

6           Q.       Has American Italian Pasta Company  
7 promoted its pasta products through any sort  
8 of promotional channels?

9           A.       Promotional channels, you mean,  
10 vehicles, promotional vehicles?

11          Q.       Right.

12          A.       Yes. We consistently promote our  
13 Mueller's brand through many different  
14 vehicles.

15                   First means is to get distribution  
16 on the retail shelf and there are dollars  
17 associated with gaining that distribution.

18                   We certainly do trade promotions,  
19 which are dollars used through the retail  
20 channel to get a special price promotion, buy  
21 one, get one free, cents off, and many of  
22 those result in a feature ad in the  
23 retailer's circular which typically shows the  
24 package of Mueller's product.

25                   There are also other vehicles that

1           have been used over the years, including  
2           television, radio, print advertising,  
3           free-standing insert coupons in the Sunday  
4           circulars.

5                       So, yes, there's many means for  
6           advertising and promoting the Mueller's brand.

7           Q.       Since your tenure at American  
8           Italian Pasta Company, have the packages  
9           always borne the phrase, "America's Favorite  
10          Pasta"?

11          A.       Yes, they have.

12          Q.       Does American Italian Pasta Company  
13          do any printed advertising?

14          A.       Yes, we do.

15          Q.       For its Mueller's products?

16          A.       Yes, for Mueller's, yes.

17          Q.       And what types of print advertising  
18          is that?

19          A.       Typically, it is in the  
20          free-standing insert, which is the Sunday  
21          coupon; however, magazine ads have been done  
22          in the past, as well as the feature ads  
23          through the retailer's circular.

24          Q.       Have there been any broadcast media  
25          promotions for Mueller's products?

1                   A.       There have prior to my tenure with  
2 Mueller's, there had been broadcast media  
3 both, I believe, radio and television.

4                   Q.       Does the package appear in the  
5 print advertising primarily?

6                   A.       Yes, it does.

7                   Q.       Do you keep examples of past  
8 advertising in your business records for  
9 marketing of Mueller's products?

10                  A.       Yes, we do.

11                             (Deposition Exhibit-52 was marked  
12 by Mr. Van Hoozer for identification.)

13                  Q.       (By Mr. Van Hoozer) Let me show  
14 you what's been marked as Exhibit 52 and ask  
15 if you can tell me what that is?

16                  A.       Yes, this is an example of a  
17 coupon also known as a free-standing insert.

18                             I believe that's how this would  
19 have been used to promote Mueller's pasta  
20 with consumers.

21                             And in this it shows a picture of  
22 the Mueller's package and has some copy on it  
23 and it has a coupon for a savings for the  
24 consumer.

25                             Typically -- and this doesn't

1 particularly say -- these are circulated  
2 throughout the trading area through the  
3 free-standing inserts.

4 Q. I notice that Exhibit 52 has two  
5 pages to it.

6 A. Correct.

7 Q. Is that -- What can you tell me  
8 about the second page?

9 A. This is a different value on the  
10 coupon.

11 On the first page, it's a dollar  
12 on four.

13 On the second page, it's 55 cents  
14 off. So it could be that these were  
15 distributed and, typically, you can do  
16 different values in different marketplaces and  
17 that may be what this is representing.

18 It's conceivable, and I don't know  
19 from this example, that one of these was a  
20 full page and the other one was a half-page.

21 But, again, there's nothing to tell  
22 me that with certainty. And you definitely  
23 see in both of these, in the Mueller's  
24 package, "America's Favorite Pasta" is clearly  
25 visible on both of these examples or both

1 pages.

2 (Deposition Exhibit-53 was marked  
3 by Mr. Van Hoozer for identification.)

4 Q. (By Mr. Van Hoozer) Let me show  
5 you what's been marked as Exhibit 53. Could  
6 you tell me what that is?

7 A. This appears to be a trade  
8 advertisement in a trade publication that  
9 refers to the Mueller's Makes a Meal Program,  
10 talks about some changes to the product, new  
11 packaging, new advertising, and 15 meal ideas  
12 on every box and is directed specifically to  
13 Giant Eagle, which is a retail customer of  
14 American Italian Pasta Company.

15 And in this, again, it shows the  
16 Mueller's package and clearly shows "America's  
17 Favorite Pasta" in that package.

18 Q. Based on your knowledge of the  
19 Mueller's history, could you tell me what  
20 they're referring to about new packaging in  
21 this advertisement?

22 A. Yeah. I believe this is the  
23 packaging as we referred to -- I don't  
24 remember the exact exhibit numbers, but this  
25 is the version right prior to the current

1 version of package design that we have today  
2 and this was work that was done to refresh  
3 the package from the prior Best Foods  
4 version.

5 And research was done to understand  
6 what the best ways to show this package to  
7 consumers to get them -- you know, get more  
8 retail take away.

9 So this was a packaging refresh,  
10 not a full re-design that was done and this  
11 is communicating that to the retail trade  
12 that there's new packaging, new advertising,  
13 and that part of this new package design was  
14 new meal ideas on the box.

15 Q. Was there a period when part of  
16 Mueller's pasta was sold in a blue box?

17 A. Yes, there was. And prior to my  
18 time with the company, the Mueller's brand  
19 was segmented into two different package  
20 designs.

21 One was the traditional Mueller's  
22 red, white, and blue and the other one was a  
23 Mueller's Pasta La Bella, which was in a blue  
24 bag. And there may have been boxes, as  
25 well.

1                   And the positioning on that was a  
2                   more authentic Italian product, but it was  
3                   certain cuts within the Mueller's brand.

4                   It was not across every item in  
5                   the line. It was the more Italian cuts and  
6                   did not include, you know, two of the main  
7                   volume items, which would be spaghetti and  
8                   the elbows that are two mainstays of the  
9                   brand. And that, I believe, was in 2001  
10                  when that was -- that endeavor was  
11                  undertaken.

12                 Q.       Was the blue box that you referred  
13                  to in use when you arrived in 2004?

14                 A.       It was not.

15                         (Deposition Exhibits-54THRU57 were  
16                  marked by Mr. Van Hoozer for identification.)

17                 Q.       (By Mr. Van Hoozer) Let me show  
18                  you what's been marked Exhibits 55, 56--

19                         MR. VAN HOOZER: Just a moment.  
20                  Let's go off the record.

21                         (A discussion was held off the  
22                  record.)

23                         MR. VAN HOOZER: We can go back  
24                  on the record.

25                 Q.       --and Exhibit 57.

1 MR. BANNER: May I have a 57,  
2 please?

3 MR. VAN HOOZER: (Counsel handed  
4 exhibit to Mr. Banner.)

5 MR. BANNER: Thank you.

6 Q. (By Mr. Van Hoozer) Mr. Lericos,  
7 can you tell me what vintage Exhibits 55 --  
8 I'm sorry, 54, 55, 56, and 57 are?

9 A. Yes, these are Mueller's packages  
10 from Best Foods design, so two packaging  
11 iterations -- current iteration.

12 There was one prior to that and  
13 this was the one prior to that. So, two  
14 back. And that's not including the Pasta La  
15 Bella product that we talked about a moment  
16 ago.

17 Q. And just quickly for the record,  
18 could you identify what product is shown in  
19 each of those Exhibits 54 through 57?

20 A. Sure. Exhibit 54 was elbows, but  
21 this was an innovative product, Pasta Quick,  
22 that was a quick-cook version so kind of a  
23 unique new product for the Mueller's brand.

24 Exhibit 55 was tri-color ruffles,  
25 so multiple-colored pasta in the same package.



1 Exhibit 56 was Italian style penne rigate.

2 And Exhibit 57 was semolina --  
3 regular semolina ready-cut pasta.

4 Q. Does American Italian Pasta Company  
5 market a product called "ready-cut"?

6 A. Yes, we do.

7 Q. What are the common branding  
8 elements for each of these four packages  
9 which are Exhibits 54 through 57?

10 A. The Mueller's brand name and  
11 treatment of the same on all four of these.  
12 The predominantly white background of the  
13 package, "America's Favorite Pasta," "Enriched  
14 Macaroni Product," I believe is on all of  
15 them. And that's the predominant common  
16 elements.

17 (Deposition Exhibit-59 was marked  
18 by Mr. Van Hoozer for identification.)

19 Q. (By Mr. Van Hoozer) Let me give  
20 you what's been marked Exhibit 59.

21 MR. BANNER: Where is 58?

22 MR. VAN HOOZER: I don't have a  
23 58.

24 Q. Let me show you what's been marked  
25 as Exhibit 59. Could you tell me what

1 Exhibit 59 is?

2 A. This appears to be a selling sheet  
3 for the retail trade announcing a promotion  
4 on the Mueller's packaging where the consumer  
5 could save two -- or save 55 cents on a  
6 purchase of any two Mueller's Savory  
7 Collection product.

8 Q. To whom is this promotion directed?

9 A. The promotion would be directed to  
10 the consumer. This particular sheet is the  
11 announcement to the retail trade of how the  
12 promotion works.

13 Q. And was this a document that was  
14 maintained in your records?

15 A. Yes.

16 Q. Do you see "America's Favorite  
17 Pasta" or at least "America's Favorite P"  
18 that appears on there?

19 A. Yes, you do.

20 (Deposition Exhibit-60 was marked  
21 by Mr. Van Hoozer for identification.)

22 Q. (By Mr. Van Hoozer) Here is what  
23 I've marked as Exhibit 60. Tell me if you  
24 can identify that.

25 A. Yes. This is a copy of a

1 free-standing insert, which would be a  
2 consumer coupon and this is the announcement  
3 showing the actual design of the coupon to  
4 the retail trade to announce this coupon was  
5 being placed, what the dates were, what the  
6 value is, to show them what the consumer  
7 would be seeing in the free-standing inserts.

8 It does speak to -- You know,  
9 there is specific copy on here, "Make pasta  
10 better with Mueller's." And underneath  
11 "Mueller's," "America's Favorite Pasta."

12 Q. When was that promotion to take  
13 place?

14 A. This was May 14th of 2000.

15 Q. And what type of promotional  
16 activity would these couponing events be  
17 categorized as, in your business?

18 A. It's a consumer promotion where the  
19 consumer is enticed to purchase with a  
20 cents-off coupon.

21 (Deposition Exhibit-58 was marked  
22 by Mr. Van Hoozer for identification.)

23 Q. (By Mr. Van Hoozer) Having now  
24 found the sticker for Exhibit 58, let me show  
25 you what I've marked as Exhibit 58 and see

1 if you can tell me what that is?

2 A. Yes, this was another promotion  
3 where the Mueller's brand was being  
4 cross-promoted or joint promoted with a  
5 special offer with Tupperware where the  
6 consumer would purchase this as a unit,  
7 including the pasta and the Tupperware.

8 And this is the announcement to  
9 the trade about this being available in the  
10 fall of 2000.

11 And it shows what the actual value  
12 pack that the consumer would see on the shelf  
13 looked like, which included a Tupperware  
14 package with the spaghetti inside it and with  
15 specific copy points on the exterior that  
16 show what the consumer is getting, eight  
17 ounces of Mueller's pasta and the Tupperware  
18 spaghetti dispenser.

19 And it shows the package of  
20 Mueller's and clearly displays "America's  
21 Favorite Pasta" on that package.

22 Q. With regard to Exhibits 59 and 60,  
23 do these include any representation of what  
24 the consumer would see for each piece?

25 A. Yes, they do.

1 Q. Okay. And so there would be an  
2 actual coupon that results -- that appears as  
3 it does in these promotions?

4 A. That's correct.

5 (Deposition Exhibit-61 was marked  
6 by Mr. Van Hoozer for identification.)

7 Q. (By Mr. Van Hoozer) Also, let me  
8 show you Exhibit 61. In looking at Exhibit  
9 58, do you see any correlation?

10 A. Yes, this is photography of the  
11 actual value pack that was promoted in  
12 Exhibit 58, 58 being the sell sheet to the  
13 retail trade and Exhibit 61 being photography  
14 of the actual produced value pack unit.

15 Q. Can you tell when this promotion  
16 was to take place?

17 A. It was to take place in the fall  
18 of 2000.

19 Q. And on this value pack, do you see  
20 the words, "America's Favorite Pasta" anywhere  
21 associated with Mueller's?

22 A. Yes, you do. There is the image  
23 of the Mueller's spaghetti package and clearly  
24 it states, "America's Favorite Pasta" above --  
25 within that package as it was on the actual

1 retail package.

2 Q. Do you know who a personality is  
3 by the name of Rachael Ray?

4 A. Yes, I do. She is a personality  
5 on -- that does food-related television  
6 programming, is a personality as Rachael Ray  
7 Quick Meals, 30-Minute Meals, and has been on  
8 television promoting recipes and has  
9 programming, different types, over the years,  
10 but has definitely been on TV promoting  
11 different recipes and recipe deliveries,  
12 particularly within 30-Minute Meals.

13 Q. Did she have any affiliation with  
14 American Italian Pasta?

15 A. Yes, she did.

16 Q. And what was the nature of that  
17 affiliation?

18 A. She was helping to promote the  
19 Mueller's brand through advertising and  
20 promotion.

21 Q. Do you know what time frame that  
22 occurred?

23 A. It would have been after 2000. I  
24 don't remember the specific time frame of it,  
25 but I believe it was probably 2002.

1 (Deposition Exhibit-62 was marked  
2 by Mr. Van Hoozer for identification.)

3 Q. (By Mr. Van Hoozer) Let me show  
4 you what's been marked as Exhibit 62. Could  
5 you tell me what is Exhibit 62?

6 A. Exhibit 62 -- the first page shows  
7 a recipe card with Rachael Ray, author of  
8 30-Minute Meals, specifically called out for a  
9 recipe Rachael Ray has made for Mueller's  
10 bowties.

11 The second page shows a  
12 free-standing insert, coupon, full page, that  
13 shows Rachael Ray, has the same recipe, and  
14 has a coupon for 55 cents off any two  
15 Mueller's products. It shows photography of  
16 the Mueller's package with the finish recipe.

17 Rachael Ray's image is on the  
18 bottom of the FSI and the Mueller's bowtie  
19 package is there and "America's Favorite  
20 Pasta" is visible on the front of that  
21 package.

22 And then the third page looks like  
23 the backside of the first page or the recipe  
24 with some other creative ideas on making  
25 pasta. And it does show the Mueller's

1 package with " America's Favorite Pasta"  
2 clearly on it.

3 And then the fourth page is  
4 another example of coupon referring to  
5 Mueller's Makes a Meal, which is associated  
6 with the same type of information that was on  
7 Page 3, and a coupon, and the Mueller's  
8 package with "America's Favorite Pasta" clearly  
9 visible.

10 Q. Mr. Lericos, how are Mueller's  
11 products typically displayed at retail?

12 A. Typically, the product is on a --  
13 what we could consider a brand block on the  
14 retail shelf with numerous different cuts or  
15 items within that block.

16 So depending on the distribution  
17 within that particular retailer, it could be  
18 anywhere from four feet to eight or twelve  
19 feet of space on the retail shelf and all  
20 the packages are on the shelf lined up.

21 And because they're boxes, it's  
22 very -- that's why you consider it a brand  
23 block. You see the brand across the entire  
24 section and it's very easy to understand and  
25 read the communication that's on the package.



1           Q.       Would the packages shown, for  
2           example, in Exhibits 2 and 3 be rated -- how  
3           would they be rated?

4           A.       I'm not sure I understand the  
5           question.

6           Q.       Well, in other words, how many  
7           different cuts are currently provided by  
8           American Italian Pasta Company under the  
9           Mueller's brand?

10          A.       Gosh, currently under the Mueller's  
11          brand, it's in the 50 to 60 range. And  
12          depending on your distribution within that  
13          account would depend how many you would get.  
14          So it could be as little as six to ten,  
15          could be as many as 50.

16                   And, you know, that includes the  
17          different sizes of the same product. So, you  
18          know, 1 pound, 8 ounce; 2 pound; 3 pound.  
19          So there's a -- and that also includes the  
20          noodle products, not just the pasta products.

21          Q.       Is there promotional expense  
22          associated with obtaining shelf space?

23          A.       There is. There is an industry  
24          term called "slotting fees," which basically  
25          when you go to sell a retailer, they say,

1 "Well, how much space would you like?" You  
2 would tell them this is how much space we  
3 think you should have in your store.

4 And they will either agree or  
5 disagree and then they will say, well, to be  
6 able to put in those many items, we're going  
7 to charge you "X" amount of dollars typically  
8 per item in order for us to put that product  
9 on the shelf.

10 And that is reportedly for them to  
11 help cover their cost of re-planogramming  
12 their section and actually physically putting  
13 the items into their system and putting that  
14 product on the shelf.

15 (Deposition Exhibit-63 was marked  
16 by Mr. Van Hoozer for identification.)

17 Q. (By Mr. Van Hoozer) Mr. Lericos,  
18 let me show you Exhibit 63 and tell me if  
19 you recognize that?

20 A. I do.

21 Q. Is that a document that came from  
22 your records?

23 A. Yes. This is, again, was prior to  
24 our owning the brand, a Best Foods  
25 free-standing insert.

1                   Q.       Can you see a date in connection  
2 with this?

3                   A.       There is a copyright date of 1989  
4 on the bottom left-hand corner of the  
5 Mueller's portion of this.

6                             And I can see on the coupon it  
7 appears that the expiration date on the  
8 coupon is 9-30-89.

9                             So that would tell me that this  
10 was a coupon that was probably dropped or in  
11 distribution three to six months prior to  
12 that expiration date.

13                            And the fact that this has  
14 perforations in this indicates that it came  
15 from the company that drops the coupons.

16                            This is out of their printed set  
17 and this is showing that it's void because it  
18 was a circulation back to the company they  
19 didn't want to get into distribution.

20                   Q.       Now, in connection with this  
21 Mueller's advertising, do you see the use of  
22 the phrase "America's Favorite Pasta"?

23                   A.       Yes, in the bottom copy, "Celebrate  
24 the 4th with Mueller's, America's Favorite  
25 Pasta. "

1                   Q.       And is this a document that you  
2                   keep in the ordinary course of business?

3                   A.       Yes, it is.

4                             (Deposition Exhibit-64 was marked  
5                   by Mr. Van Hoozer for identification.)

6                   Q.       (By Mr. Van Hoozer) I'll show you  
7                   what's been marked as Exhibit 64. Can you  
8                   tell me what is Exhibit 64?

9                   A.       Yes. This is another example of a  
10                  Mueller's coupon and free-standing insert form.  
11                  It is dated 1990, Best Foods.

12                            It has a variety of Mueller's  
13                  product and it says, "Save 40 cents on  
14                  Mueller's, America's Favorite Pasta." And the  
15                  expiration on this is 8-31-90.

16                  Q.       Is this a document that AIPC keeps  
17                  in the ordinary course of its records?

18                  A.       Yes, it is.

19                            (Deposition Exhibit-65 was marked  
20                  by Mr. Van Hoozer for identification.)

21                  Q.       (By Mr. Van Hoozer) I'll show you  
22                  what I've marked as Exhibit 65. Could you  
23                  tell me what that is?

24                  A.       Exhibit 65 is the same  
25                  free-standing insert creative copy that was in

1 Exhibit 64; however, the expiration date is  
2 different, which indicates the same creative  
3 was used but this was an additional FSI  
4 distribution because the expiration on this  
5 was 4-30-90 versus 8-31-90.

6 So these are two different -- same  
7 creative, but two different, you know, two  
8 different drops of the same coupon.

9 Q. And is this a document that's  
10 maintained in the course of your -- in the  
11 ordinary course of business for AIPC?

12 A. Yes, it is.

13 (Deposition Exhibit-66 was marked  
14 by Mr. Van Hoozer for identification.)

15 Q. (By Mr. Van Hoozer) Let me show  
16 you what I've marked as Exhibit 66.

17 Could you tell me if that came  
18 from your -- AIPC's records?

19 A. Yes, it did.

20 Q. And what is the document marked  
21 Exhibit 66?

22 A. This is another free-standing  
23 insert for Mueller's pasta and it says, "Make  
24 pasta better with Mueller's, America's Favorite  
25 Pasta." And it appears -- the copyright on

1           this is 1999, Best Foods; however, I can't  
2           read the full expiration date on the  
3           Mueller's coupon, 7-31, I would assume '99  
4           because the coupons below it from another  
5           manufacturer are also dated '99.

6           Q.       Is this a document that you  
7           maintained in the ordinary course of your  
8           business records?

9           A.       Yes, I do.

10                   (Deposition Exhibit-67 was marked  
11           by Mr. Van Hoozer for identification.)

12           Q.       (By Mr. Van Hoozer) Let me show  
13           you what's been marked as Exhibit 67. Did  
14           that come from your records?

15           A.       Yes, it did.

16           Q.       And could you tell me what that  
17           is?

18           A.       This is another free-standing  
19           insert from Mueller's pasta, specifically pasta  
20           ruffles,

21                   "Mueller's, for all your pasta  
22           needs." It includes a recipe and a specific  
23           coupon. Expiration is 7-31-98 with a copyright  
24           of 1998 from Best Foods.

25                   It shows a Mueller's packaging

1           which is rather small and you can see  
2           "America's Favorite Pasta," but it certainly  
3           is not extremely large.

4           Q.       Is that a document that's  
5           maintained in the ordinary course of business?

6           A.       Yes, it is.

7                   (Deposition Exhibit-68 was marked  
8           by Mr. Van Hoozer for identification.)

9           Q.       (By Mr. Van Hoozer) Let me show  
10          you what's been marked as Exhibit 68. Can  
11          you tell me what that is?

12          A.       This is another free-standing  
13          insert for Mueller's pasta. It reads,  
14          "Mueller's, for all your pasta meals.  
15          America's Favorite Pasta for over 125 years."  
16          And the date on this is 7-31-98, copyright  
17          Best Foods 1998. And it shows four different  
18          Mueller's packages in it.

19          Q.       Is that a document that you  
20          maintained in the ordinary course of business?

21          A.       Yes.

22                   (Deposition Exhibit-69 was marked  
23          by Mr. Van Hoozer for identification.)

24          Q.       (By Mr. Van Hoozer) I'll show you  
25          what I've marked as Exhibit 69 and see if

1                   you can tell me what that is?

2                   A.       It's another free-standing insert  
3                   for Mueller's pasta, "Save 25 cents on  
4                   Mueller's, America's Favorite Pasta." And the  
5                   expiration on the coupon is May 31, 1989.

6                   Q.       Is that a document that's  
7                   maintained in the ordinary course of your  
8                   business?

9                   A.       Yes.

10                  Q.       Mr. Lericos, has Mueller's been  
11                  promoted through the Internet by American  
12                  Italian Pasta Company?

13                  A.       Yes. We have a web site that  
14                  does promote the Mueller's brand.

15                               (Deposition Exhibit-70 was marked  
16                               by Mr. Van Hoozer for identification.)

17                  Q.       (By Mr. Van Hoozer) Let me show  
18                  you Exhibit No. 70. Could you tell me what  
19                  that is?

20                  A.       This is a screen shot or a screen  
21                  capture from the Mueller's web site which  
22                  does show the Mueller's packaging.

23                               Kind of hard to see because of the  
24                               reproduction quality here, but it does -- the  
25                               packaging does have "America's Favorite Pasta"



1 clearly visible.

2 Q. Is that the current web site?

3 A. I don't believe this is the  
4 current web site. This is a prior iteration  
5 of the web site.

6 Q. Do you know whether that was the  
7 web site from your era?

8 A. I don't believe this is -- these  
9 images weren't on the web site since I have  
10 been with the company.

11 Q. Is that a document that's  
12 maintained in the ordinary course of your  
13 business records?

14 A. Yes.

15 (Deposition Exhibit-71 was marked  
16 by Mr. Van Hoozer for identification.)

17 Q. (By Mr. Van Hoozer) Let me show  
18 you what's been marked as Exhibit 71, if you  
19 can tell me what that is.

20 A. This is another screen capture from  
21 the AIPC Mueller's web site.

22 Q. From looking at it, I see that  
23 there's a reference to Rachael Ray recipes?

24 A. That's correct.

25 Q. Does that give you an idea of the

1 timing of this web site?

2 A. Yes. This should have been in  
3 2002. To the best of my knowledge, that  
4 would be the timing of this.

5 Q. What words appear in the upper  
6 left-hand corner of this web site?

7 A. "Mueller's, America's Favorite  
8 Pasta."

9 Q. Is this a record maintained in the  
10 ordinary course of your business?

11 A. Yes, it is.

12 (Deposition Exhibit-72 was marked  
13 by Mr. Van Hoozer for identification.)

14 Q. (By Mr. Van Hoozer) Has American  
15 Italian Pasta Company promoted Mueller's to  
16 any mass market retailers?

17 A. "Promoted" meaning--

18 Q. Mueller's.

19 A. Promoted the Mueller's brand?

20 Q. Yes.

21 A. Yes.

22 Q. Let me show you what's been marked  
23 as Exhibit 72.

24 See if you can tell me -- I  
25 believe that's an extract.

1           A.       Yes. This is a trade  
2           advertisement through Mass Market Retailers  
3           magazine on behalf of American Italian Pasta  
4           Company, and the second page shows the ad  
5           that specifically features American Italian  
6           pasta brands, including the Mueller's brand.

7           Q.       Is the style of packaging shown in  
8           Exhibit 2 evident on that page, which is  
9           Bates No. A011696?

10          A.       Exhibit 72 or--

11                   MR. BANNER: Exhibit 2.

12          A.       Yes, that's the same as -- this is  
13          our current package which was shown in  
14          Exhibit No. 2.

15          Q.       (By Mr. Van Hoozer) Same style as  
16          it was--

17          A.       Different item, but same style,  
18          same design.

19                   THE WITNESS: Could we take a  
20          biology break?

21                   MR. VAN HOOZER: Let's do.

22                   MR. BANNER: Good idea.

23                   (A break was taken.)

24                   (The parties returned to the  
25          deposition and the following proceed- ings

1                   were had:)

2                               MR. VAN HOOZER: Back on the  
3                   record.

4                               (Deposition Exhibit-73 was marked  
5                   by Mr. Van Hoozer for identification.)

6                   Q.        (By Mr. Van Hoozer) Let me show  
7                   you what's been marked as Exhibit 73.

8                               Mr. Lericos. Can you tell me what  
9                   Exhibit 73 is?

10                   A.       This is records of promotions  
11                   through the military commissaries and there is  
12                   obviously quite a bit of different things  
13                   within this packet, but referring back to the  
14                   Mueller's brand. So these are coupons  
15                   primarily that are distributed to the military  
16                   commissaries.

17                               And what's represented here are  
18                   many Mueller's coupons showing the package and  
19                   in many cases clearly visible is "America's  
20                   Favorite Pasta" on the package.

21                   Q.       At the beginning, I see a report.  
22                   Is there a listing of Mueller's products on  
23                   that report?

24                   A.       Yes.

25                   Q.       And during what period did this

1 report cover or as of what date?

2 A. Appears to be 7-21-05 and then a  
3 few pages back there's one from 8-19-03.

4 Q. Is this a document that AIPC  
5 maintains in the regular course of its  
6 business?

7 A. Yes.

8 Q. Do you maintain an archive of  
9 historical material for the Mueller's pasta  
10 products?

11 A. Yes, I do.

12 Q. And where is that maintained?

13 A. In my office.

14 Q. How were the materials in the  
15 archive acquired?

16 A. Various means. Many of them were  
17 acquired from the Mueller family and over the  
18 years people have sent us information, some  
19 things were actually purchased through the  
20 Internet.

21 So there's various means for how  
22 we've received things. Probably the bulk of  
23 which, though, came from the Mueller's family.

24 (Deposition Exhibit-74 was marked  
25 by Mr. Van Hoozer for identification.)

1                   Q.        (By Mr. Van Hoozer) Let me show  
2                   you what's been marked as Exhibit 74. Do  
3                   you recognize Exhibit 74?

4                   A.        Yes, I do.

5                   Q.        Is that maintained in your archive?

6                   A.        Yes, it is.

7                   Q.        What is Exhibit 74?

8                   A.        It is our recipe book from  
9                   Mueller's macaroni products.

10                  Q.        Do you know what the source of  
11                  this was?

12                  A.        (No response.)

13                  Q.        From whom you obtained it?

14                  A.        Oh, no. I think this was from  
15                  the Mueller family. I'm fairly certain of  
16                  that, but not 100 percent of that.

17                  Q.        Referring to Page A07262, the last  
18                  page of this exhibit, do you see a photograph  
19                  of Mueller's products?

20                  A.        I do.

21                  Q.        That's obviously not the current  
22                  packaging?

23                  A.        It is not.

24                  Q.        Do you have any idea when this was  
25                  published?

1 A. Uh--

2 Q. If you don't, that's fine.

3 A. I don't, unless it says in here  
4 somewhere. I don't see where it says where  
5 there's a copyright on it.

6 MR. VAN HOOZER: I think at this  
7 point, I need to go and designate the  
8 remainder of the record confidential under the  
9 protective order. I was trying to cover as  
10 much as I could before we got to that point.

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1 MR. BANNER: This is no longer  
2 confidential?

3 MR. VAN HOOZER: No. We'll take  
4 this part off the confidential part from  
5 here.

6 Q. (By Mr. Van Hoozer) Mr. Lericos,  
7 is this a copy of your application file from  
8 the patent and trademark office?

9 A. Yes, it is.

10 Q. And do you know to what  
11 application -- whose application is serial  
12 number 78136703 which is causing this  
13 application to be suspended?

14 A. Yes. I believe that's the Barilla  
15 application for the use of "America's Favorite  
16 Pasta."

17 (Deposition Exhibit-86 was marked  
18 by Mr. Van Hoozer for identification.)

19 Q. (By Mr. Van Hoozer) Again, I will  
20 show you Exhibit 86.

21 Could you look through that  
22 document, please?

23 A. (Witness complied.)

24 Q. What is the mark covered by  
25 application?

1 A. 86?

2 Q. Yes. And look at the--

3 A. "America's Favorite Pasta" for  
4 American Italian Pasta Company.

5 Q. Let me just invite your attention  
6 to that page.

7 Does the presentation of "America's  
8 Favorite Pasta" in that drawing page include  
9 a flag element?

10 A. Yes, it does.

11 MR. BANNER: I didn't get that  
12 page. Nobody loves me.

13 (Laughter.)

14 MS. BURBACH: Why don't I just  
15 make a copy of what he has so we'll all have  
16 the same thing.

17 MR. VAN HOOZER: Let's do it.

18 (A break was taken.)

19 (The parties returned to the  
20 deposition and the following proceedings were  
21 had:)

22 MR. BANNER: Just for  
23 clarification, 85 is the 4/89 application and  
24 86 is the 1/90 application.

25 Q. (By Mr. Van Hoozer) Mr. Lericos,



1 looking at Exhibit 86 is the same  
2 application, prior pending application, cited  
3 in that notice of suspension, as well?

4 A. Yes.

5 MR. VAN HOOZER: I'm going to move  
6 to admit Exhibits 1 through 86 and then I'm  
7 going to turn over to your witness.

8 MR. BANNER: Sure. Thank you. I  
9 just have a few questions since he's taken  
10 most of mine.

11 CROSS-EXAMINATION

12 BY-MR.BANNER:

13 Q. I'm Brian Banner, for the record,  
14 and I represent Barilla in this deposition.

15 Mr. Lericos, did you succeed Dan  
16 Trot in the executive job, V.P.?

17 A. Dan was executive vice president.  
18 I am just a vice president, so I'm not in  
19 full capacity. He was also president of the  
20 sales company.

21 Q. Is he still with the company?

22 A. He is no longer.

23 Q. Did you report to him when he was  
24 there?

25 A. Yes, I did.

1 Q. Did he hire you?

2 A. Yes, he did.

3 Q. Where did you work before you  
4 worked at AIPC?

5 A. Rexall Sundown.

6 Q. Okay. I remember that. What were  
7 your duties there?

8 A. I was senior brand manager for a  
9 product line called Osteo Bi-Flex, which was  
10 a diet and nutritional supplement.

11 Q. Okay. Based on your experience in  
12 the food industry and your education and  
13 years of experience, is it usual for food  
14 manufacturers to apply to federally register  
15 important brands for products?

16 A. Yes.

17 Q. Did you, as director or vice  
18 president, create an annual budget for AIPC  
19 pasta, including "America's Favorite Pasta"  
20 program?

21 A. I'm sorry, can you clarify that a  
22 little bit?

23 Q. Since you took over as director of  
24 marketing and became vice president, did you  
25 create an annual budget for that?

1                   A.       Yes. I think we've been over  
2                   that.

3                   Q.       Who is your current advertising  
4                   agency?

5                   A.       Cramer Krasselt.

6                   Q.       Can you spell that for me?

7                   A.       C-r-a-m-e-r, Krasselt,  
8                   K-r-a-s-s-e-l-t, although there are other  
9                   smaller agencies we work with on other types  
10                  of projects. So they're not exclusive.

11                  Q.       With regard to Mueller's brand, how  
12                  long have they represented AIPC?

13                  A.       Since 2005.

14                  Q.       Who was the ad agency on the  
15                  Mueller's brand prior to them?

16                  A.       Power Packed.

17                  Q.       How long did they represent you,  
18                  to your knowledge?

19                  A.       To my knowledge, I believe it was  
20                  from '92-- but it could have been '93 through  
21                  '94, somewhere in that range. They started  
22                  prior to my involvement.

23                  Q.       To 2004 or 2005?

24                  A.       2004. When I came into the  
25                  business, they were the agency.

1 Q. Did they produce most of the TV  
2 and radio ads, to your knowledge?

3 A. Barkley Evergreen was their  
4 predecessor and they did -- I believe they  
5 did the Rachael Ray campaign.

6 Q. Was the Rachael Ray campaign in  
7 2001 and 2002?

8 A. I believe it was 2002.

9 Q. Okay. Which ad agency since you  
10 became director of marketing produced most of  
11 the print ads, the promotional ads?

12 A. That would have to be Cramer  
13 Krasselt.

14 Q. And can you tell me a little bit  
15 about how-- because they have expiration  
16 dates, how often do you do one?

17 Do you do a campaign, promotional  
18 campaign, once a year or do you do them by  
19 seasons?

20 A. Typically you would -- it depends  
21 on the product, but typically you look at  
22 particular seasons within your seasonality and  
23 you might do it according to that.

24 I mean, a lot of it is tied to  
25 budget, as well, how many dollars do you have

1 to spend, can I do one, three, six or nine,  
2 depending on budgetary constraints.

3 And it also depends on the  
4 product, if it is a multi-grain specialty  
5 item versus across the full grain.

6 Q. There are a lot of dates and  
7 things that change?

8 A. There really are.

9 Q. Since you've been with AIPC, how  
10 many campaigns for pasta, other than the  
11 Mueller brand, have you authorized?

12 A. I authorized?

13 Q. Or has AIPC run, approximately?

14 A. Approximately five.

15 Q. And those are typically of what  
16 duration?

17 A. Typically, three to six months.

18 Q. Have you, to your knowledge, ever  
19 engaged an ad agency to create any form of  
20 advertising in which AIPC promotes the slogan,  
21 "AIPC separate and apart from Mueller's," in  
22 any form?

23 A. AIPC separate from Mueller's?

24 Q. That's correct. The brand I'm  
25 interested in is "America's Favorite Pasta."

1 Did AIPC, while you were there,  
2 ever create any advertising of any kind,  
3 whether it be print, TV, radio, coupon,  
4 commissary, did it ever promote "America's  
5 Favorite Pasta" where the brand Mueller's did  
6 not appear anywhere in that ad?

7 A. Not to my knowledge.

8 Q. If AIPC -- if the "America's  
9 Favorite Pasta" is such an important brand to  
10 AIPC as those things show, why was there no  
11 ad campaign just for "America's Favorite  
12 Pasta"?

13 A. Strictly due to budgetary  
14 constraints, although I would add that the  
15 package design and the presence of "America's  
16 Favorite Pasta," the package is probably the  
17 major way for American Italian Pasta Company  
18 that we do communicate our brand message to  
19 consumers.

20 We are just not a heavily -- we  
21 don't heavily spend on specific consumer  
22 advertising.

23 MR. BANNER: I handed you some  
24 exhibits that you were going to mark.

25 THE COURT REPORTER: They're right

1                   here.

2                               (Applicant's Exhibits-87THRU92 were  
3 marked by the court reporter for  
4 identification.)

5               Q.       (By Mr. Banner) I'm going to show  
6 you what I've marked Applicant's 89 and  
7 that's also your exhibit -- the same box.

8               A.       Um-hum.

9               Q.       Let me get what number that is.  
10 It was toward the front.

11                       MR. VAN HOOZER: 6.

12               Q.       (By Mr. Banner) Okay. And I  
13 believe you said that in terms of importance,  
14 the Mueller's logo design is the most  
15 important thing on the box.

16                       The second most important is the  
17 white background?

18               A.       Um-hum.

19               Q.       And the third most important is  
20 the "America's Favorite Pasta" mark?

21               A.       Um-hum.

22               Q.       And the fourth most was the  
23 coloring?

24               A.       I can't recall exactly, but it may  
25 have been the "Quality Since 1867."

1                   Q.       I note on the side of the box the  
2 statement -- Can you read that?

3                   A.       "Mueller's is a registered  
4 trademark of the American Italian Pasta  
5 Company."

6                   Q.       To your knowledge, does that kind  
7 of an ownership statement appear on every  
8 brand of pasta, whether it be Mueller's brand  
9 pasta or the AIPC sells since you've been  
10 there?

11                  A.       I believe so.

12                  Q.       And looking at the front of the  
13 package to the Mueller's, the most important  
14 thing on the packaging you said, do you see  
15 this symbol? What is that symbol?

16                  A.       It's a registration mark.

17                  Q.       Why is that there? Who authorized  
18 that to be there?

19                  A.       The patent office, trademark  
20 office.

21                  Q.       Who at AIPC might have told the  
22 printer to put that there?

23                  A.       I suppose our package design  
24 manager.

25                  Q.       Do you ever review packaging before



1                   its printed?

2                   A.       Yes, I do.

3                   Q.       And moving to the third most  
4                   important thing on the package, "America's  
5                   Favorite Pasta," is there any statement on  
6                   the package other than "America's Favorite  
7                   Pasta" that it is a trademark of AIPC's?

8                   A.       That "America's Favorite Pasta" is  
9                   a trademark? I don't believe so.

10                  Q.       Is that consistent across the  
11                  product line wherever "America's Favorite  
12                  Pasta" exists on packaging?

13                  A.       To the best of my knowledge.

14                  Q.       Turning our attention, then, to the  
15                  advertising that we have seen.

16                         To your knowledge, in any of the  
17                  advertising that the opposer has presented  
18                  today, is there any statement by AIPC or its  
19                  predecessors in interest that "America's  
20                  Favorite Pasta" is a trademark of that  
21                  company, the current owner?

22                  A.       I don't believe so.

23                  Q.       On the back of the package it  
24                  says, "Makes a Meal." Has that ever been  
25                  claimed as a trademark, to your knowledge?

1 A. I'm really not certain.

2 Q. Okay. I'm going to hand to you  
3 Exhibit 90. Can you tell me what it is?

4 A. This is a Mueller's package for  
5 rotelli, which is the design version prior to  
6 the current version in use today.

7 Q. And can you tell -- Can you  
8 describe the trademark on the front?

9 A. The trademark on the front is the  
10 Mueller's brand name. It has a circle "R"  
11 next to it.

12 And also on the front is  
13 "America's Favorite Pasta" under a flag  
14 design. And under Mueller's is "Quality  
15 Since 1867."

16 Q. Thank you. Now, with regard to  
17 the trademark, "America's Favorite Pasta" and  
18 flag design, did you -- was this in existence  
19 when you got to AIPC?

20 A. Yes, it was.

21 Q. Why do you think that they  
22 selected the flag? Do you have any idea why  
23 they selected the American flag?

24 A. From the record, because it was a  
25 very Americana branded positioning of

1 consumers. Because of the red, white, and  
2 blue that's been on the package design for  
3 many, many years, consumers considered this an  
4 Americana-type product.

5 So from the record, it appears  
6 that was the reason they included the flag  
7 design.

8 Q. From the December, 2005,  
9 announcement, you changed your packaging--

10 A. Right.

11 Q. --is the flag any longer part of  
12 that -- I think it's Opposer's Exhibit No.  
13 3--

14 A. Um-hum.

15 Q. --is the flag on that packaging  
16 anywhere?

17 A. No, it is not.

18 Q. Who made the decision to remove  
19 the flag?

20 A. I did in conjunction with the  
21 recommendation from the package design company.

22 And the reason we made that  
23 decision, we tried to incorporate the  
24 Americana look with the star and the red  
25 banner with the white Mueller's name in it,

1 so it was a different way to represent the  
2 same thing.

3 Q. Okay. Going back to what I've  
4 marked -- or handing out I should say,  
5 Applicant's Exhibit No. 91 to you, would you  
6 tell me what that is?

7 A. This is a copy of the Mueller's  
8 ready-cut package design which was the design  
9 version prior to the current.

10 Q. If you look on the second page,  
11 back of the box, I have circled a sentence  
12 on there. Can you read that for me, please?

13 A. Yes. "Taste why Mueller's is  
14 America's favorite pasta."

15 Q. Do you still use that sentence on  
16 your new packaging?

17 A. We do not.

18 Q. Who made the decision to take it  
19 off?

20 A. I made that decision.

21 Q. On what basis did you make that  
22 decision?

23 A. We didn't feel as though it was as  
24 meaningful as the points that we might put on  
25 the package relative to the current consumer's

1 point of view against pasta.

2 Q. Um-hum. Do you know how long that  
3 sentence appeared on that packaging prior to  
4 your arrival at American?

5 A. I do not.

6 Q. Thank you. In your opinion, is  
7 this slogan, "America's Favorite Pasta," a  
8 laudatory term?

9 A. Yes.

10 Q. Is the current color of the script  
11 form of "America's Favorite Pasta" on this  
12 package in blue (indicated) significant of  
13 something about the contents of the pasta  
14 versus where it appears in red?

15 A. Well, it's red on the other  
16 package, and on the multi-grain product it is  
17 in blue. But on the regular product it is in  
18 red.

19 It's just a matter of design.  
20 There is no significance to why -- I mean,  
21 the significance is because this is reversed  
22 out red and blue versus the regular product  
23 because the product--

24 MR. VAN HOOZER: Just a second.  
25 You're saying "this" and "that."

1 THE WITNESS: Sorry.

2 MR. VAN HOOZER: Could you -- it's  
3 going to help the record--

4 MR. BANNER: Maybe we should  
5 identify these.

6 MR. VAN HOOZER: Well, the  
7 corresponding exhibit is already in--

8 MR. BANNER: Why don't we--

9 MR. VAN HOOZER: But if you could  
10 just say--

11 Q. (By Mr. Banner) This one is your  
12 Exhibit No. 5. And sea shells is Exhibit  
13 No. 4, Opposer's Exhibits 4 and 5.

14 A. Okay. This says 7.

15 Q. Okay, 7.

16 MR. VAN HOOZER: That's because  
17 you've got rotini.

18 Q. (By Mr. Banner) This is  
19 multi-grain.

20 A. Okay.

21 MR. VAN HOOZER: Multi-grain penne.  
22 So we've got to find the--

23 THE WITNESS: That's 5.

24 Q. (By Mr. Banner) Okay. This is  
25 4.

1                   A.       So regarding the color of  
2                   "America's Favorite Pasta"--

3                   Q.       We're looking at Opposer's Exhibits  
4                   5 and 4.

5                   A.       Right. Exhibit 4 is our  
6                   traditional semolina pasta, which is a white  
7                   package with a large blue stripe at the top  
8                   and the bottom.

9                             And the product name, product  
10                   description, is also in blue, so the choice  
11                   was made from a design standpoint to make  
12                   "America's Favorite Pasta" in red so that it  
13                   would not be blurred in at the same color as  
14                   the product description.

15                            For Exhibit No. 5, the multi-grain  
16                   pasta, multi-grain -- well, the banner on the  
17                   top and the bottom are red so -- and the  
18                   description of multi-grain is in red, so the  
19                   same logic was used, "America's Favorite  
20                   Pasta" was in blue so it would not blend in  
21                   -- it would stand out more than just -- so  
22                   it would not look like it was part of the  
23                   multi-grain description.

24                   Q.       Okay. In terms of the  
25                   presentation of "America's Favorite Pasta" on

1 Exhibit -- Opposer's Exhibits 4 and 5, I note  
2 that from my point of view the descriptor,  
3 penne and sea shells, is in pretty large type  
4 in comparison to "America's Favorite Pasta."

5 It's also -- why is "America's  
6 Favorite Pasta" in small type on these two  
7 exhibits, these two packages, in smaller type?

8 A. Smaller type than the product  
9 description?

10 Q. And than the brand appears.

11 A. Due to the brand block nature that  
12 we discussed earlier, the pasta set, consumers  
13 will walk to the white boxes. They will  
14 identify it as Mueller's.

15 They have imagery around Mueller's  
16 that includes the name Mueller's, "America's  
17 Favorite Pasta," the white box, and the blue  
18 and red stripes.

19 Then once they are within the  
20 brand, now it's important to understand which  
21 product do I want to purchase.

22 And in consumer research, in their  
23 decision tree, the next most important thing  
24 is now that I'm in the right brand, what cut  
25 of product do I want to purchase?



1                   And if I don't clearly understand  
2                   that, then I'm not going to be able to find  
3                   the product that I'm interested in.

4                   Q.       I see.

5                   A.       So it's a matter of decision-tree  
6                   hierarchy.

7                   Q.       I see. And the brand "America's  
8                   Favorite Pasta" is laudatory and do you  
9                   consider it part of the entire trade dress of  
10                  the brand packaging?

11                  A.       Yes.

12                  Q.       Okay. I don't know if I've asked  
13                  this or not, but since January, 2004, have  
14                  you ever used the letters "TM" next to  
15                  "America's Favorite Pasta"?

16                  A.       Not to my knowledge.

17                  Q.       To your knowledge, prior to coming  
18                  to AIPC in all of the stuff, the literature  
19                  you have in your office that tracks the  
20                  Mueller's brand, do you have any place that  
21                  you've ever used or seen someone else use for  
22                  AIPC or its predecessor, the letters "TM"  
23                  next to " America's Favorite Pasta"?

24                  A.       Not to my knowledge, but I don't  
25                  have intimate detail of every piece of

1 documentation that we have. It's boxes and  
2 boxes of literature.

3 Q. Since you've been at AIPC and  
4 advertised Mueller's brand "America's Favorite  
5 Pasta," has there been, other than in the  
6 Sunday supplements of newspapers, separate ads  
7 in the newspaper on a weekly or daily basis?

8 A. In the newspaper?

9 Q. Yes.

10 A. No, not to my knowledge, other  
11 than the circulars that the retailer does put  
12 into the food section of the paper, which  
13 typically has an image of the package. And  
14 those are also distributed within the store  
15 environment.

16 Q. Have you -- To your knowledge, has  
17 any survey or retailer ever told you that a  
18 consumer asked for "America's Favorite Pasta"?

19 A. Not to my knowledge.

20 Q. I would like to show you what's  
21 marked Applicant's Exhibit 87 and ask you if  
22 you're aware of this recipe book? What am I  
23 showing you?

24 A. It's an image of what you said, a  
25 recipe book. I assume that it has Joie

1 Warner's spaghetti on the front of it.

2 Q. Um-hum.

3 A. And at the bottom it does say  
4 "America's Favorite Pasta."

5 Q. Do you know of any -- Have you  
6 ever seen or known of anyone else using  
7 "America's Favorite Pasta" to describe a pasta  
8 product or cooking pasta product?

9 A. No, I have not. And I've never  
10 seen this particular thing before either.

11 MR. BANNER: I can't think of  
12 anything else to ask of you. I'm done.

13 MR. VAN HOOZER: I have just a  
14 couple questions on redirect.

15 REDIRECT EXAMINATION

16 BY-MR.VAN-HOOZER:

17 Q. Mr. Lericos, you were talking about  
18 Exhibit No. 5, physical specimen, when you  
19 were talking with counsel.

20 And I believe he asked you about a  
21 couple of terms in here that were more  
22 prominent.

23 Did I recall that you had said  
24 that multi-grain and penne were more prominent  
25 than " America's Favorite Pasta"?

1 A. Yes.

2 Q. Okay. I'd like you to look back  
3 to Exhibit No. 78 and looking at the phrase,  
4 "Italy's Number One Pasta," do you see a  
5 registration symbol in connection with that?

6 A. I do not.

7 Q. Do you see any "TM" together with  
8 it?

9 A. I do not.

10 Q. Okay. Is the lettering of  
11 "Italy's Number One Pasta" on Exhibit No. 78  
12 smaller or larger than the campanelle?

13 A. It's smaller.

14 Q. Is it smaller than the Barilla  
15 logo?

16 A. It's significantly smaller than the  
17 Barilla logo.

18 Q. Okay.

19 MR. VAN HOOZER: That's all I  
20 have. Oh, wait just a second. That's all I  
21 have.

22 (The proceedings concluded at 1:40  
23 p.m.)

24 (Witness excused.)

25 .

Andrew John Lericos

## DESCRIPTION OF EXHIBITS

| <u>EXHIBIT</u> | <u>DESCRIPTION</u>                                                              | <u>PAGE</u> |
|----------------|---------------------------------------------------------------------------------|-------------|
| 1              | Notice to Take Deposition                                                       | 5           |
| 2              | Current Mueller's packaging                                                     | 9           |
| 3              | Press release announcing<br>changing the Mueller's package<br>design            | 11          |
| 4              | Current Mueller's package for<br>shortgood product                              | 12          |
| 5              | Mueller's Pasta Box multi-grain<br>formula?                                     | 13          |
| 6              | Mueller's Pasta Box multi-grain<br>formula                                      | 13          |
| 7              | Mueller's Pasta Box multi-grain<br>formula                                      | 13          |
| 8              | Package design for Mueller's<br>prior to most recent packaging<br>change        | 15          |
| 9              | Mueller's Fettuccine product<br>sold by Best Foods                              | 17          |
| 10             | Mueller's package used prior<br>to current package design for<br>elbow macaroni | 19          |

## DESCRIPTION OF EXHIBITS (CONT.)

|    | <u>EXHIBIT</u> | <u>DESCRIPTION</u>            | <u>PAGE</u> |
|----|----------------|-------------------------------|-------------|
| 1  |                |                               |             |
| 2  |                |                               |             |
| 3  | 11             | Prior package design for      | 19          |
| 4  |                | fettuccine                    |             |
| 5  | 12             | Prior package design for      | 19          |
| 6  |                | 3-pound thin spaghetti        |             |
| 7  | 13             | Prior package design for      | 19          |
| 8  |                | twists                        |             |
| 9  | 14             | Prior package design for      | 19          |
| 10 |                | elbow macaroni                |             |
| 11 | 15             | Prior package design for      | 19          |
| 12 |                | tri-color twists              |             |
| 13 | 16             | Prior package design for      |             |
| 14 |                | sea shells                    |             |
| 15 | 17             | Prior package design for      | 19          |
| 16 |                | rigatoni                      |             |
| 17 | 18             | Prior package design for      | 19          |
| 18 |                | 8-ounce lasagna               |             |
| 19 | 19             | Prior package design for      | 19          |
| 20 |                | linguine                      |             |
| 21 | 20             | Prior package design for      | 19          |
| 22 |                | 1-pound lasagna               |             |
| 23 | 21             | Prior package design for      | 19          |
| 24 |                | 2-pound spaghetti             |             |
| 25 | 22             | Prior package design for ziti | 19          |

## DESCRIPTION OF EXHIBITS (CONT.)

1  
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| <u>EXHIBIT</u> | <u>DESCRIPTION</u>                                 | <u>PAGE</u> |
|----------------|----------------------------------------------------|-------------|
| 23             | Prior package design for<br>sea shells             | 19          |
| 24             | Prior package design for<br>mini-penne             | 19          |
| 25             | Prior package design for<br>8-ounce thin spaghetti | 19          |
| 26             | Prior package design for<br>vermicelli             | 19          |
| 27             | Prior package design for<br>8-ounce spaghetti      | 19          |
| 28             | Prior package design for<br>8-ounce vermicelli     | 19          |
| 29             | Prior package design for<br>angel hair             | 19          |
| 30             | Prior package design for<br>thin spaghetti         | 19          |
| 31             | Prior package design for<br>jumbo shells           | 19          |
| 32             | Prior package design for<br>gemelli                | 19          |
| 33             | Prior package design for<br>rotini                 | 19          |

## DESCRIPTION OF EXHIBITS (CONT.)

| <u>EXHIBIT</u> | <u>DESCRIPTION</u>                                                                                          | <u>PAGE</u> |
|----------------|-------------------------------------------------------------------------------------------------------------|-------------|
| 34             | Prior package design for<br>fine linguine                                                                   | 19          |
| 35             | Prior package design for<br>tri-color shells                                                                | 19          |
| 36             | Prior package design for<br>32-ounce elbow macaroni                                                         | 19          |
| 37             | Prior package design for<br>tri-color ruffles                                                               | 19          |
| 38             | Prior package design for<br>tri-color bowties                                                               | 19          |
| 39             | Prior package design for<br>mostaccioli                                                                     | 19          |
| 40             | Prior package design for<br>ridged elbows                                                                   | 19          |
| 41-51          | Mueller's package design<br>prior to Exhibit 8 designed<br>and managed by Best Foods for<br>Mueller's brand | 27          |
| 52             | Free-standing insert coupon<br>for Mueller's pasta                                                          | 32          |
| 53             | Trade advertisement for<br>Mueller's Makes a Meal                                                           | 34          |



## DESCRIPTION OF EXHIBITS (CONT.)

|    | <u>EXHIBIT</u> | <u>DESCRIPTION</u>               | <u>PAGE</u> |
|----|----------------|----------------------------------|-------------|
| 1  |                |                                  |             |
| 2  |                |                                  |             |
| 3  | 54             | Mueller's packaging, elbows,     | 36          |
| 4  |                | pasta quick                      |             |
| 5  | 55             | Mueller's packaging, tri-color   | 36          |
| 6  |                | ruffles                          |             |
| 7  | 56             | Mueller's Italian Style          | 36          |
| 8  |                | penne rigate                     |             |
| 9  | 57             | Mueller's semolina ready-cut     | 36          |
| 10 |                | pasta                            |             |
| 11 | 58             | Trade announcement about         | 40          |
| 12 |                | promotion combining Mueller's    |             |
| 13 |                | product with Tupperware          |             |
| 14 | 59             | Selling sheet announcing         | 38          |
| 15 |                | promotion on Mueller's packaging |             |
| 16 | 60             | Free-standing insert coupon      | 39          |
| 17 | 61             | Photograph of                    | 42          |
| 18 |                | Tupperware/spaghetti value pack  |             |
| 19 | 62             | Rachel Ray Recipe and            | 44          |
| 20 |                | cents-off coupon                 |             |
| 21 | 63             | Best Foods free-standing insert  | 47          |
| 22 |                | form                             |             |
| 23 | 64             | Mueller's coupon and             | 49          |
| 24 |                | free-standing insert form,       |             |
| 25 |                | expires 8-31-90                  |             |

## DESCRIPTION OF EXHIBITS (CONT.)

| <u>EXHIBIT</u> | <u>DESCRIPTION</u>                                                      | <u>PAGE</u> |
|----------------|-------------------------------------------------------------------------|-------------|
| 65             | Free-standing insert creative<br>copy, expires 4-30-90                  | 49          |
| 66             | Free-standing insert for<br>Mueller's pasta                             | 50          |
| 67             | Free-standing insert for<br>Mueller's pasta ruffles                     | 51          |
| 68             | Free-standing insert for<br>Mueller's pasta, expires<br>7-31-98         | 52          |
| 69             | Free-standing insert for<br>Mueller's pasta, expires<br>5-31-89         | 52          |
| 70             | Screen capture Mueller's web<br>site showing Mueller's<br>packaging     | 53          |
| 71             | Screen capture Mueller's web<br>site referencing<br>Rachael Ray recipes | 54          |
| 72             | Trade Advertisement                                                     | 55          |
| 73             | Records of promotions                                                   | 57          |
| 74             | Mueller's recipe book                                                   | 58          |
| 75             | Strategic direction for<br>Mueller's brand                              | 61          |

## DESCRIPTION OF EXHIBITS (CONT.)

|    | <u>EXHIBIT</u> | <u>DESCRIPTION</u>              | <u>PAGE</u> |
|----|----------------|---------------------------------|-------------|
| 1  |                |                                 |             |
| 2  |                |                                 |             |
| 3  | 76             | Mueller's brand essence pasta   | 61          |
| 4  | 77             | Quantitative research document, | 65          |
| 5  |                | February 2002                   |             |
| 6  | 78             | Barilla campanelle pasta        | 67          |
| 7  | 79             | Consumer Research Study,        | 69          |
| 8  |                | March 2004                      |             |
| 9  | 80             | Sales of Mueller's product      | 76          |
| 10 | 81             | Sales numbers of Best Foods     | 78          |
| 11 | 82             | Best Foods advertising and      | 80          |
| 12 |                | promotional programs            |             |
| 13 | 83             | Best Foods advertising and      | 81          |
| 14 |                | promotional programs            |             |
| 15 | 84             | Best Foods advertising and      | 82          |
| 16 |                | promotional programs            |             |
| 17 | 85             | Application file from patent    | 83          |
| 18 |                | and trademark office, 4/89      |             |
| 19 | 86             | Application file from patent    | 84          |
| 20 |                | and trademark office, 1/90      |             |
| 21 | 87             | Recipe Book                     | 92          |
| 22 | 88             | (Not described in proceedings)  |             |
| 23 | 89             | Mueller's pasta box multi-grain | 92          |
| 24 |                | formula                         |             |
| 25 | 90             | Mueller's package for rotelli   | 92          |

## DESCRIPTION OF EXHIBITS (CONT.)

| <u>EXHIBIT</u> | <u>DESCRIPTION</u>                    | <u>PAGE</u> |
|----------------|---------------------------------------|-------------|
| 91             | Mueller's ready-cut package<br>design | 92          |
| 92             | (Not described in proceedings)        | 92          |

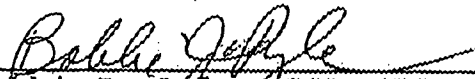
Exhibits (not attached)

(Exhibits retained by Mr. Van Hoozer.)

1 Attorney for the Adverse Party was  
2 present, and officer was not disqualified as  
3 specified in Rule 28 of the Federal Rules of  
4 Civil Procedure.

5 I further certify that I am not  
6 related to any party herein or their counsel,  
7 that I am not clerk or stenographer of either  
8 party or of the attorney of either party, and  
9 have no interest in the result of this  
10 litigation.

11 IN WITNESS WHEREOF, I have hereunto  
12 set my hand this 12th day of November, 2006.

13  
14   
15 Bobbi J. Pyle, CSR, CCR #434  
16 Certified Court Reporter  
17 Missouri Supreme Court  
18 State of Missouri  
19  
20  
21  
22  
23  
24  
25



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CAPTION

The Deposition of Andrew John Lericos, taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the deposition be taken by the reporter and that same be reduced to typewritten form.

It was agreed by and between counsel and the parties that the Deponent will read and sign the transcript of said deposition.

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## CERTIFICATE

STATE OF *Missouri* :COUNTY/CITY OF *Clay* :

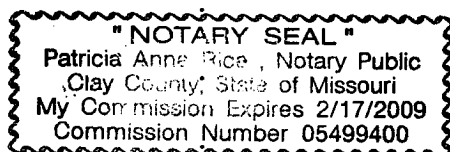
Before me, this day, personally  
appeared, Andrew John Lericos, who, being duly  
sworn, states that the foregoing transcript  
of his/her Deposition, taken in the matter,  
on the date, and at the time and place set  
out on the title page hereof, constitutes a  
true and accurate transcript of said  
deposition.

*Andrew John Lericos*

Andrew John Lericos

SUBSCRIBED and SWORN to before me this  
*5th* day of *November* 2006 in the  
jurisdiction aforesaid.

My Commission Expires Notary Public

*Patricia Anne Rice*



## DEPOSITION ERRATA SHEET

RE: SetDepo, Inc.

File No. 11712

Case Caption: American Italian Pasta Co. Vs.  
Barilla G. E. R. FRATELLI-SOCIETA PER AZIONI

Deponent: Andrew John Lericos

Deposition Date: November 3, 2006

To the Reporter:

I have read the entire transcript of my  
Deposition taken in the captioned matter or  
the same has been read to me. I request  
that the following changes be entered upon  
the record for the reasons indicated. I  
have signed my name to the Errata Sheet and  
the appropriate Certificate and authorize you  
to attach both to the original transcript.

Page No. 18 Line No. 14-15 Change to:

*distributed by Best Foods. 1999 appears to be the mark on this*

Reason for change: *Punctuation*

Page No. 45 Line No. 22 Change to:

*very neat, that's why you consider it a brand*

Reason for change: *Missing word*

Page No. 74 Line No. 14 Change to:

*And this -- they derive from the*

Reason for change: *Typo*

Page No. 88 Line No. 16 Change to:

*Powerpact*

Reason for change: *Spelling*

Page No. 90 Line No. 5 Change to:

*item versus across the full line*

Reason for change: *wrong word*

Deposition of Andrew John Lericos

Page No. Line No. Change to:

Reason for change:

Page No. Line No. Change to:

Reason for change:

Page No. Line No. Change to:

Reason for change:

Page No. Line No. Change to:

Reason for change:

Page No. Line No. Change to:

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Reason for change:

Page No.      Line No.      Change to:

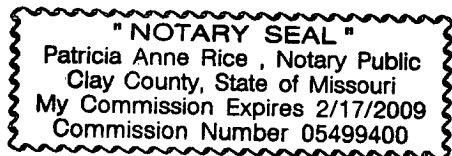
Reason for change:

SIGNATURE: Andrew John Lericos      DATE: 11/28/06

Andrew John Lericos

*State of Missouri  
County of Clay*

*Patricia Anne Rice      11/28/06*



# Exhibit 75–Redacted

# Exhibit 76–Redacted

# Exhibit 77–Redacted

# Exhibit 78—Redacted

Redacted—Exhibit 79